



UNITED STATES PATENT AND TRADEMARK OFFICE

W
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,664	10/09/2001	Mark D. Ackerman	1565.039US1	6325

21186 7590 12/13/2007
SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

EXAMINER

BADII, BEHRANG

ART UNIT	PAPER NUMBER
	3694

MAIL DATE	DELIVERY MODE
12/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	09/973,664	ACKERMAN ET AL.
	Examiner	Art Unit
	Behrang Badji	3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 19 September 2007.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 15-21 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 15-21 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date: _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Applicant's election without traverse of claims 15-21 in the reply filed on 9/19/07 is acknowledged.

The requirement is still deemed proper and is therefore made FINAL. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim 22 is hereby withdrawn from further consideration.

P = paragraph, e.g. p1 – paragraph 1.

Response to Arguments

Applicant's arguments with respect to claims 15-21 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It appears that the applicant is trying to claim a license customizing schema. The applicant's wording in the independent claim is vague and does not specifically point out this matter. However this is just a guess as to what the applicant is trying to claim. It is unclear what the independent claim is trying to claim by the wording of the claim. Does the software come with a license to begin with? Does the user tell the software maker what to make? Is the user involved in the making

of the software and/or license? If the above is clarified, then what is the purpose of the exclusion and inclusion identifier? The use of inclusion and exclusion identifiers is well known in software and programming. The general wording of the independent claim is unclear.

Claim Rejections - 35 USC § 103

Claims 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biddle et al. USPAP 2002/0107809, and further in view of Clement et al. USP 7,203,703.

As per claim 15, Biddle discloses a method for licensing external processes on a server comprising the steps of: generating an electronic license, wherein the electronic license is generated by formatting a customer order for a software product in accordance with a licensing schema and the formatted electronic license to include a plurality of software command directives embedded within the formatted electronic license to indicate whether a particular software command directive associated with a particular feature of the soft-ware product is to be accepted for registration or rejected for registration, and wherein each software command directive includes a command name associated with a particular software command or operation of the software product and indicating the acceptance or rejection of registration for that particular software command or operation within the software product and executing the registered commands (abstract; p18, 72, 14 and 17; claims 19, 27-28, 35-37). Although the user of inclusion and exclusion identifiers is inherent and well known in the art, a second reference is brought in to show this limitation. Biddle does not disclose an

inclusion and/or exclusion identifier. Clement discloses an inclusion or exclusion identifier, and wherein at least one software command for the software product is associated with the exclusion identifier; and registering selective ones of the software commands in response to the software command directives and their inclusion and exclusion identifiers (col.9, 50-54). It would have been obvious to modify Biddle to include an inclusion and/or exclusion identifier as taught by Clement in order to give the user and/or vendor the ability to modify the software license such that it is cost beneficial for both the user and the vendor as to what part of the software is to be used.

As per claim 16, Biddle further discloses wherein the step of includes directing the software product to only use a set of licensed hardware resources, the set of licensed hardware resources also being defined by one or more fields in the electronic license (abstract; p18, 72, 14 and 17; claims 19, 27-28, 35-37).

As per claim 17, Biddle further discloses wherein the step of generating includes generating a license upgrade, the license upgrade defining a set of additional commands for registration that are not part of software commands registered in conjunction with one or more prior licenses (abstract; p18, 72, 14 and 17; claims 19, 27-28, 35-37).

As per claim 18, Biddle further discloses wherein the step of generating includes generating a license upgrade, the license upgrade describing additional hardware resources licensed for use by the software product that are not part of hardware resources licensed for use by prior licenses (abstract; p18, 72, 14 and 17; claims 19, 27-28, 35-37).

As per claim 19, Biddle further discloses wherein the step of generating includes generating a license upgrade, the license upgrade describing additional hardware resources licensed for use by the software product that add further capabilities to hardware resources licensed for use by prior licenses (abstract; p18, 72, 14 and 17; claims 19, 27-28, 35-37).

As per claim 20, Biddle further discloses further comprising either one of (a) installing the electronic license in the server prior to shipment of the server to an end-user of the server and (b) providing the electronic license to the end-user on a removable media for installation in the server after the shipment of the server to the end-user (abstract; p18, 72, 14 and 17; claims 19, 27-28, 35-37).

As per claim 20, Biddle further discloses further comprising installing the electronic license in the server in a over-the-wire process including (a) digitally signing the electronic license by a vendor, (b) transmitting the digitally signed electronic license over a communications network from the vendor to the server, (c) validating the digitally signed electronic license by the server and (d) installing the validated electronic license in the server (abstract; p18, 72, 14 and 17; claims 19, 27-28, 35-37).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Behrang Badii whose telephone number is 571-272-6879. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450

Application/Control Number:
09/973,664
Art Unit: 3694

Page 7

Alexandria, VA 22313-1450

or faxed to (571)273-8300

Hand delivered responses should be brought to

United States Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry of a general nature or relating to the status of this application
or proceeding should be directed to the Technology Center 3600 Customer Service
Office whose telephone number is **(571) 272-3600.**

Behrang Badii
Patent Examiner
Art Unit 3694

BB



ELLA COLBERT
PRIMARY EXAMINER